

THIS DISPOSITION IS NOT
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Palladium Investors, Ltd.

Serial No. 75/285,366

Thomas I. Rozsa of Rozsa & Chen LLP for Palladium
Investors, Ltd.

Rudy R. Singleton, Trademark Examining Attorney, Law Office
109 (Ronald Sussman, Managing Attorney)

Before Seeherman, Hairston and Holtzman, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Palladium Investors, Ltd. has appealed from the
refusal of the Trademark Examining Attorney to register
HOLLYWOOD PALLADIUM, with the term HOLLYWOOD disclaimed, as
a trademark for "wearing apparel, namely, t-shirts,
jackets, outer jackets made of wind-resistant material,

sweatshirts, tank tops, shirts, sweatshirts [sic],¹ vests, pants, sweatpants, shorts, and hats."² Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles two registered marks owned by the same entity³ that applicant's use of its mark on its identified goods is likely to cause confusion or mistake or to deceive. The cited marks are both for the word PALLADIUM, registered for "clothing for men, women and children, namely, shirts, pants, ties, scarves, suits, sweatshirts, jackets, teeshirts, pullovers, coats, raincoats, parkas, dresses and blouses"⁴ and "footwear."⁵

¹ This term was included twice in both the application and the drawing. The Examining Attorney apparently did not object to the double listing, and therefore this is the manner in which the identification appears in the Office records.

² Application Serial No. 75/285,366, filed May 2, 1997, asserting a date of first use and first use in commerce as of January 31, 1995. As originally filed, the application included restaurant services in Class 42. Because no refusal was raised to the registration of the mark in Class 42, this class was divided out of the application at applicant's request.

³ Although the Examining Attorney's brief indicates that the registrations are owned by Palladium S.A., Office records show that the registrations were assigned to Consolidated Shoe Company, Inc., and that the assignments were recorded in 1998.

⁴ Registration No. 1,827,532, issued March 22, 1994; Section 8 affidavit accepted; Section 15 affidavit received. In his brief the Examining Attorney inadvertently misidentified this registration as No. 1,827,195, but the registration was correctly identified during examination, and applicant refers to it by the correct number in its brief.

⁵ Registration No. 1,160,084, issued July 7, 1981; Section 8 affidavit accepted; Section 15 affidavit received.

Both applicant and the Examining Attorney filed briefs; an oral hearing was not requested.

We affirm the refusal of registration.

Our determination under Section 2(d) of the Act is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. **Federated Food, Inc. v. Fort Howard Paper Co.**, 544 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the goods, applicant's various items of clothing are identical, in part, to the clothing items in Registration No. 1,827,532 (t-shirts, jackets, sweatshirts, shirts, pants) and are otherwise closely related to the clothing and footwear identified in the two cited registrations. Applicant does not dispute this, but concentrates its arguments on asserted differences in the marks.

We turn, therefore, to a consideration of the marks, keeping in mind the well-established principle that when marks would appear on virtually identical goods or

services, the degree of similarity necessary to support a conclusion of likely confusion declines. **Century 21 Real Estate Corp. v. Century Life of America**, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Applicant's mark is HOLLYWOOD PALLADIUM; the cited marks are for PALLADIUM per se. Although applicant's mark does contain the additional term HOLLYWOOD, we find this additional element is not sufficient to distinguish the marks. Although marks are to be compared in their entirety, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark. **In re National Data Corp.**, 753 F.2d 1056, 224 USPQ 749 (USPQ 1985). In this case, HOLLYWOOD is a geographic term which has been disclaimed, while PALLADIUM is an arbitrary term for clothing.⁶ Given the geographic descriptiveness of HOLLYWOOD, and the arbitrary nature of PALLADIUM, the addition of the term

⁶ We take judicial notice of the definitions of "palladium," taken from The American Heritage Dictionary of the English Language, new coll. ed. © 1976, as meaning "a soft, ductile, steel-white, tarnish-resistant, metallic element occurring naturally with platinum, especially in gold, nickel, and copper ores... : a sacred object having the power to preserve a city or state possessing it; a safeguard, especially one viewed as a guarantee of the integrity of social institutions...." The Board may take judicial notice of dictionary definitions. **University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.**, 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

HOLLYWOOD in applicant's mark HOLLYWOOD PALLADIUM may indicate to consumers that the PALLADIUM clothing comes from the geographic location of HOLLYWOOD, or may suggest to consumers that the PALLADIUM clothing has the glamour associated with the motion picture industry. However, the marks HOLLYWOOD PALLADIUM and PALLADIUM convey the same commercial impression. Consumers who are familiar with the registrant's PALLADIUM mark for clothing and footwear are likely, upon seeing the mark HOLLYWOOD PALLADIUM on identical or closely related items of clothing and footwear, to assume that HOLLYWOOD PALLADIUM is a variant of the registrant's mark, perhaps adapted to suggest that the goods come from California or that they epitomize a style associated with the motion picture industry and motion picture stars.

Recognizing that its mark HOLLYWOOD PALLADIUM incorporates all of the cited mark PALLADIUM, applicant has argued that there is no rule that an applicant cannot register a trademark which contains in part the whole of a prior registered trademark. It is true that there is no per se rule that confusion is always likely in such a situation. However, it is the general rule that a subsequent user may not appropriate the entire mark of another as part of a composite mark where that portion is

the recognizable and dominant feature of the whole and the portion which creates the commercial impression of the entirety. See **Miller Brewing Co. v. Premier Beverage, Inc.**, 210 USPQ 43 (TTAB 1981). In this case, as noted above, PALLADIUM is the dominant portion of applicant's mark, and the addition of the geographic term HOLLYWOOD does not result in a mark, HOLLYWOOD PALLADIUM, which is as a whole distinguishable from the cited mark PALLADIUM.

We will not go into great detail about the remaining duPont factors, except to note that the goods would be sold through the same channels of trade and to the same classes of consumers, and that, because of the nature of the identified items, these consumers would be the general public, and cannot be presumed to be particularly knowledgeable or sophisticated purchasers. Moreover, as stated above, the registered mark PALLADIUM must be considered a strong mark, since it is an arbitrary term for clothing and footwear. Applicant has proffered no evidence of either third-party use or registrations for such marks in the clothing field or, for that matter, for any goods or services.

Finally, applicant asserts that there is no evidence of any actual confusion. However, applicant has provided no information as to its sales or advertising, such that we

Ser. No. 75/285,366

could conclude from the lack of instances of actual confusion that confusion is not likely to occur.

Decision: The refusal of registration on the basis of both of the cited registrations is affirmed.

E. J. Seeherman

P. T. Hairston

T. E. Holtzman
Administrative Trademark Judges
Trademark Trial and Appeal Board